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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,334	10/31/2003	Ari Moskowitz	151P11699US01	9684

23322 7590 06/16/2005

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EXAMINER
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BIANCO, PATRICIA

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/698,334	Applicant(s) MOSKOWITZ ET AL.	
	Examiner Patricia M. Bianco	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
     4a) Of the above claim(s) 1 and 12-16 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 2-11 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 04 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/2/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> .                  |

## DETAILED ACTION

### *Election/Restrictions*

Applicant elected, without traverse, the invention of claims 2-11 in a telephone conversation with Examiner LoAn Thanh on May 24<sup>th</sup>, 2005.

Claims 1 and 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Drawings*

The drawings were received on Feb. 04, 2005. These drawings are approved.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2 the claim sets forth the limitation "**into said**

***proximate a ventricle***" and in line 3 "***coupling a valve into said catheter.***" The recitation said proximate a ventricle is not a clear step; it appears that a word is missing between *said* and *proximate*. The step of coupling a valve *into* a catheter also does not make sense. Does applicant mean coupling a valve to a catheter? These recitations are confusing and render the claim indefinite. Correction is required.

Claims 4, 5, 7 & 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 4 & 7 set forth the limitation "***said catheter has approximately a one hundred eighty degree bend.***" The recitation is confusing since 180 degrees is a straight line and therefore cannot be a bend. With respect to claims 5 & 8, they are indefinite since they depend from claims 4 & 7 respectively. These recitations are confusing and render the claim indefinite. Correction is required.

Claim 4 recites the limitation "***into said cranium***" in line four of the claim. There is insufficient antecedent basis for this limitation in the claim. Neither claim 4 or the claim it depends from sets for a step involving the cranium.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Børgesen (6,283,934). Børgesen discloses a device and method for treating hydrocephalus via implanting a catheter and valve system into the brain of a patient. The shunt/valve device is implanted between the sinus sagittalis and a ventricle. The device comprises a ventricle catheter and a sinus catheter, connected to one another by a valve. As shown in the figures depicting use or implantation, the sinus catheter has a bend, which is at least ninety degrees and appears to be approximately 7 to 11 centimeters from the opposite end of the catheter. Børgesen discloses that the device may have catheter portions made of silicone rubber, polyethylene, polypropylene, polycarbonate, polysulfone, polystyrene or PVC. Many of which have durometers of approximately 80. With respect to the method of implanting the shunt/valve device, Børgesen teaches that a first part or ventricle portion of the catheter is inserted into a ventricle, a sinus catheter portion is inserted into the sagittal sinus, and the valve is connected between them.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Watson et al. (5,662,600), Børgesen 2002/0045847 A1 & 2004/0073154 A1 all disclose analogous devices and methods.

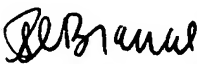
Art Unit: 3762

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia M. Bianco whose telephone number is (571) 272-4940. The examiner can normally be reached on Monday to Friday 9:00-6:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 11<sup>th</sup>, 2005

  
**PATRICIA BIANCO**  
**PRIMARY EXAMINER**

Patricia M Bianco  
Primary Examiner  
Art Unit 3762